

LITIGATION ROSTER

SALES AND USE TAX

NOVEMBER 2012

**Sales and Use Tax
NOVEMBER 2012**

NEW CASES

Case Name

Court/Case Number

NONE

CLOSED CASES

Case Name

Court/Case Number

FILLMORE, CITY OF

Los Angeles Superior Court, No. BS120799

Please refer to the case roster for more detail regarding new and closed cases

SALES AND USE TAX

LITIGATION ROSTER

NOVEMBER 2012

ALAMEDA, CITY OF, et al. v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509234

Filed –04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Alameda as being subject to use tax is valid.

Audit/Tax Period: 1995 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Trial began on October 17, 2011, and was continued to November 1, 2011. The trial commenced on October 17, 2011 and is still on-going. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. The BOE had until November 20, 2012, to determine whether to appeal the decision. BOE filed its Notice of Appeal on November 16, 2012. A hearing on Petitioner's November 13, 2012 Motion for Attorney Fees, has been continued to January 16, 2013.

ALHAMBRA, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124978

Court of Appeal, Second Appellate District No. B232833

Filed – 02/19/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Richard R. Terzian, Mark J. Mulkerin

Burke, Williams & Sorensen, LLP

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. The case is currently being briefed in the Court of Appeal.

Court of Appeal: Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding City of Pomona's local tax appeal. A Status Conference was held on August 29, 2012. The Supreme Court denied City of Pomona's request to depublish the decision of the Court of Appeal on September 19, 2012. Appellate Court officially dismissed the case seeking depublishing of its opinion on October 24, 2012. The case has returned to the trial court.

Trial Court: A Status Conference is scheduled for January 11, 2013.

BELLFLOWER, CITY OF, et al. v. State of California

Sacramento Superior Court Case No. 34-2012-80001269

Filed -09/19/12

BOE's Counsel

Seth Goldstein

BOE Attorney

John Waid

Plaintiff's Counsel

Michael G. Colantuono

Colantuono & Levin

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. BOE filed its response on October 25, 2012. On November 9, 2012, the Court denied a notice by Respondents/Defendants to re-assign this case with League of California Cities, et al., under a single judge. The court agreed there are common legal issues but each have their own unique claims and questions of law and fact.

BREA, CITY OF, et al. v. State of California

Sacramento Superior Court Case No. 34-2012-80001204

Filed -07/12/12

BOE's Counsel

Ryan Marcroft

BOE Attorney

John Waid

Plaintiff's Counsel

James Markman

Brea City Attorney

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. Plaintiff and the Department of Finance have stipulated that the case will be stayed to resolve with the city the details of what amount is due. If these negotiations break down, plaintiff will notify defendants to file a response. BOE filed its response on September 25, 2012.

BRISBANE, CITY OF v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509232

Filed -04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid. The trial commenced on November 1, 2011, and was continued to December 8, 2011.

Audit/Tax Period: 2001 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. The trial commenced on October 17, 2011 and is still on-going. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. The Board has until November 20, 2012, to determine whether to appeal the decision. The BOE had until November 20, 2012, to determine whether to appeal the decision. BOE filed its Notice of Appeal on November 16, 2012. A hearing on Petitioner's November 15, 2012 Motion for Attorney Fees, has been continued to January 16, 2013.

D.R. SYSTEMS, INC. v. State of California; State Board of Equalization

San Diego County Superior Court Case No. 37-2009-00094087

Plaintiff's Counsel

Scott Savary
Savary, APC

Filed –

BOE's Counsel

Leslie Branman Smith
BOE Attorney
Renee Carter

Issue(s): Did plaintiff file a timely Claim for Refund for self-help credits subsequently disallowed during an audit by the BOE's Sales & Use Tax Department?

Audit/Tax Period: 04/01/02 – 12/31/05

Amount: \$283,410.00

Status: In the court's Minute Order dated May 24, 2011, BOE's Motion for Summary Judgment was granted. Plaintiff's motion for reconsideration of the court's ruling denying the plaintiff's motion for summary judgment was denied on September 9, 2011. Plaintiff filed a Notice of Appeal on November 2, 2011, and BOE filed its Objection to Notice of Appeal on November 3, 2011, citing that the Plaintiff's time to file a notice of appeal lapsed on September 6, 2011. On December 23, 2011, the Court accepted the Plaintiff's Notice of Appeal upon its filing the Judgment. The case is fully briefed in the Court of Appeal; awaiting court's scheduling of oral argument.

DANIEL, HUBERT v. State Board of Equalization, et al.

Sacramento County Superior Court, Case No. 34-2012-00117995-CU-MC-GDS

Plaintiff's Counsel

Hubert Daniel
In Pro Per

Filed – 10/01/10

BOE's Counsel

James Phillips
BOE Attorney
Greg Day

Issue(s): Whether or not plaintiff had exhausted administrative remedies before filing the action in the court, as required by [Revenue and Taxation Code section 6932](#) and [Government Code section 900](#) et seq. et seq., [905](#) et seq., [910](#) et seq., and [915](#) et seq. BOE contends that an administrative appeal has not yet completed, so plaintiff is not entitled to seek judicial action. The transfer of the case to Sacramento remains pending because the Plaintiff has not paid the transfer fees.

Audit/Tax Period: None

Amount: Unspecified

Status: On May 16, 2011, the court granted BOE's Motion to Change Venue. On June 6, 2011, the Court issued an Order Granting BOE's Motion to Change Venue to Sacramento County pursuant to Revenue and Taxation Code Section 6933. The case transferred to Sacramento Superior Court upon receipt of the Plaintiff's payment of transfer fees on January 24, 2012. At the July 27, 2012 hearing, the Court tentatively ruled in favor of BOE. Plaintiff's amended complaint must be filed by August 8, 2012. The court granted BOE's motion to dismiss at the October 1, 2012 hearing. Dismissal was entered as requested by the court on November 1, 2012, with Notice thereof formally given to the Plaintiff on November 6, 2012.

EL CERRITO, CITY OF, et al. v. County of Contra Costa, et al.

Sacramento Superior Court Case No. 34-2012-80001200

Plaintiff's Counsel

Sky Woodruff

Meyers, Nave, Ribak, Silver & Wilson

Filed -07/12/12

BOE's Counsel

Seth Goldstein

BOE Attorney

John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. BOE's response to the complaint was filed on August 13, 2012.

FIDELITY ASSET MANAGEMENT, INC. v. State Board of Equalization of the State of CA

Los Angeles County Superior Court, Case No. BC485481

Plaintiff's Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lassleben & Miller, LLP

Filed - 05/25/12

BOE's Counsel

Marla Markman

BOE Attorney

Wendy Vierra

Issue(s): Whether [Regulation 1660\(c\)\(1\)](#) illegally shifts the incidence of sales taxes paid on equipment leased to tax-exempt insurance companies to the lessor.

Audit/Tax Period: None

Amount: \$246,357.78

Status: Plaintiff Fidelity Asset Management has filed a Complaint for Refund of Sales and Use Tax. BOE filed its answer on August 17, 2012. Final Status Conference is set for May 15, 2013, and a court trial for May 22, 2013.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

Filed - 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

IRVINE, CITY OF v. California State Board of Equalization

San Francisco Superior Court Case No. CPF-11-511586

Plaintiff's Counsel

Charles L. Colman III
Holland & Knight

Filed – 9/19/11

BOE's Counsel

Kris Whitten
BOE Attorneys
John Waid/Kiren Chohan

Issue(s): Whether BOE has violated the [Bradley-Burns Uniform Local Tax Law](#), wherein BOE purportedly improperly distributed local sales tax revenues from transactions involving sales negotiated in the City of Irvine and fulfilled by shipment of merchandise from out of state. This case is held in abeyance by trial court pending rulings in the Alameda, Brisbane, and South San Francisco cases.

Audit/Tax Period: None

Amount: Unspecified

Status: On September 19, 2011, Plaintiff filed a Petition for Writ of Mandate and Complaint. BOE filed its Answer in response on November 2, 2011.

ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

San Francisco Superior Court Case No. CPF-09-509234

Plaintiff's Counsel

Jordan L. Lurie, Joel E. Elkins
Weiss & Lurie

Filed – 03/20/09

BOE's Counsel

Elisa Wolfe-Donato
BOE Attorney
John Waid

Issue(s): Plaintiff contends that Ralphs improperly collected sales tax reimbursement on sales of hot coffee to go. Plaintiff seeks an injunction against Ralphs. Plaintiff also seeks an order that Ralphs institute a system to accurately track tax on sales of hot coffee to go and to make refund applications to BOE, and an injunction ordering BOE to act on Ralphs' refund applications and to deposit moneys already collected with the court. BOE contends that the court lacks jurisdiction of this case because plaintiff lacks standing to bring a suit to adjudicate a sales tax dispute. Plaintiff may not use remedies not authorized by the Legislature.

Audit/Tax Period: None

Amount: Unspecified

Status: First Amended Complaint was served on all parties on March 15, 2010. The parties negotiated a stay of proceedings pending the results in *Loeffler*, and the Stipulation was filed on June 2, 2010.

LEAGUE OF CALIFORNIA CITIES, et al. v. Ana Matosantos

Sacramento Superior Court Case No. 34-2012-80001275

Plaintiff's Counsel

Ann Taylor Schwing
Best Best & Krieger LLP

Filed –09/27/12

BOE's Counsel

Seth Goldstein
BOE Attorney
John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case. BOE’s response was due and was filed on November 20, 2012.

LOEFFLER, KIMBERLY and AZUCENA LEMUS v. TARGET CORPORATION

(Amicus Curiae Brief)

California Supreme Court Case No. S173972

Court of Appeal, Second Appellate District, Case No. B199287

Filed – 12/15/2008

BOE’s Counsel

None

BOE Attorney

John Waid

Issue(s): This action (between Loeffler and Target to which the BOE was not a party and was not informed of the existence of the litigation) alleges that Target had illegally collected sales tax reimbursement on sale of hot coffee to go. Loeffler sued Target in superior court under the Unfair Competition Law ([UCL-Bus. & Prof. Code, §§ 17200 et seq.](#))

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court dismissed the case on the grounds that there is no private right of action that permits customers to sue retailers in matters relating to sales tax.

Court of Appeal: On December 6, 2008, the court of appeal granted BOE’s application to file an amicus brief in support of Target. In a published decision issued May 12, 2009, the Second District Court of Appeal upheld the BOE’s position and affirmed the decision of the trial court on all counts.

CA Supreme Court: The court granted BOE’s application to file an amicus brief and supplemental brief in support of Respondent Target, filed respectively on April 15, 2010 and July 8, 2011.

LOS ANGELES, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124950

Filed – 02/16/10

BOE’s Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff’s Counsel

Carmen Trutanich, Pejmon Shemtoob

Office of the Los Angeles City Attorney

Issue(s): Whether BOE’s reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. The case is currently being briefed in the Court of Appeal.

Court of Appeal: Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding City of Pomona's local tax appeal. A Status Conference was held on August 29, 2012. The Supreme Court denied City of Pomona's request to depublish the decision of the Court of Appeal on September 19, 2012. Appellate Court officially dismissed the case seeking depublishing of its opinion on October 24, 2012. The case has returned to the trial court.

Trial Court: A Status Conference is scheduled for January 11, 2013.

LUCENT TECHNOLOGIES, INC. I, et al. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC402036

Filed – 11/14/08

BOE's Counsel

Ronald Ito

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Issue(s): (1) Does the sale of software qualify for technology transfer agreement treatment; (2) have the plaintiffs established that the engineering and support charges are related to sales of tangible personal property; and (3) did plaintiffs use the prior agreement to calculate their tax liability for the subject quarter. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 1/1/95 - 12/31/99

Amount: \$3,480,913.12

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. The court has rescheduled the May 15, 2013, non-jury trial to July 8, 2013. Discovery continues.

LUCENT TECHNOLOGIES, INC. II v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC448715

Filed – 11/02/2010

BOE's Counsel

Stephen Lew

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey G. Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

Issue(s): Does the sale of software qualify for technology transfer agreement treatment. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 2/1/96 – 9/30/00

Amount: \$276,832,998.67

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. The court has rescheduled the May 15, 2013, non-jury trial to July 8, 2013. Discovery continues.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross Complaint: Albertson's Inc, et al. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 25, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. A Status Conference is scheduled for February 1, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: CVS, Inc. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Richard T. Williams

Holland & Knight LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. A Status Conference is scheduled for February 1, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. A Status Conference is scheduled for February 1, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Rite Aid v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. A Status Conference is scheduled for February 1, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waide

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. A Status Conference is scheduled for February 1, 2013.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Walgreen Co. v. The California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel
Douglas C. Rawles
ReedSmith LLP

Filed – 02/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing. A Status Conference is scheduled for February 1, 2013.

MOHAN, DIANE, et al. v. Dell, Inc., et al.
San Francisco Superior Court Case No. CGC 03-419192

Plaintiffs' Counsel
Jason Bergmann
Paul, Hastings, Janofsky & Walker, LLP

Filed – 11/01/04
BOE's Counsel
Anne Michelle Burr
BOE Attorney
John Waid

Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice ([Revenue and Taxation Code 6011](#); [Regulations 1546 and 1655](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending.

The court continued the Case Management/Settlement Conference to December 9, 2011. On

December 12, 2011, the trial court gave preliminary approval to the class action settlement reached by the parties.

NATIONAL CITY, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001198

Plaintiff's Counsel

Guillermo Frias

Kane, Ballmer & Berkman

Filed –07/12/12

BOE's Counsel

Stephanie Zook

BOE Attorney

John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: The BOE is a “remedial defendant” in this case. Plaintiff notified defendants that they will file an amended complaint upon the court’s denial of their Temporary Restraining Order to halt the State from withholding local tax distributions. Plaintiff filed its Amended Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunction on August 30, 2012. BOE filed its response on October 9, 2012.

PALMDALE, CITY OF, et al. v. State of California, Board of Equalization

Los Angeles Superior Court Case No. BS124919

Plaintiff's Counsel

Mitchell E. Abbott, Veronica S. Gunderson

Richards, Watson & Gershon

Filed – 02/16/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Issue(s): Whether BOE’s reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs’ petition for writ of mandate was granted. Judgment entered March 9, 2011. BOE’s and City of Pomona’s Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners’ motion for attorney fees. The case is currently being briefed in the Court of Appeal.

Court of Appeal: Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding City of Pomona’s local tax appeal. A Status Conference was held on August 29, 2012. The Supreme Court denied City of Pomona’s request to depublish the

decision of the Court of Appeal on September 19, 2012. Appellate Court officially dismissed the case seeking depublication of its opinion on October 24, 2012. The case has returned to the trial court.

Trial Court: A Status Conference is scheduled for January 11, 2013.

PITTSBURG, CITY OF v. Robert R. Campbell, et al.

Sacramento Superior Court Case No. 34-2012-80001245

Plaintiff's Counsel

Deborah J. Fox

Meyers, Nave, Riback, Silver & Wilson

Filed –08/17/12

BOE's Counsel

Seth Goldstein

BOE Attorney

John Waid

Issue(s): Dispute is over certain provisions of [AB1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: As a “remedial defendant,” the BOE will be represented by the Attorney General’s office in this AB1484 case. BOE’s response was filed on September 17, 2012.

SONOMURA, AKIRA v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL

Plaintiff's Counsel

Bob Mullen

Attorney at Law

Filed – 05/30/08

BOE's Counsel

Leslie Smith

BOE Attorney

John Waid

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to [Revenue and Taxation Code section 6829](#) was proper; and (2) whether BOE’s Notice of Determination was timely ([Revenue and Taxation Code section 6487](#)).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002)

Amount: \$79,000.00

Status: BOE’s Answer was filed July 8, 2008. Plaintiff appears to not be actively pursuing the case at this time.

SOUTH SAN FRANCISCO, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-09-509231

Plaintiff's Counsel

Peter S. Hayes

Meyers, Nave, Roback, Silver & Wilson

Filed – 02/20/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE’s characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in South San Francisco as being subject to use tax is valid.

Audit/Tax Period: 1996 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Trial began on October 17, 2011 and was continued to November 1, 2011. The trial commenced on October 17, 2011 and is still on-going. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. The BOE had until November 20, 2012, to determine whether to appeal the decision. BOE filed its Notice of Appeal on November 16, 2012. A hearing on Petitioner's November 13, 2012 Motion for Attorney Fees, has been continued to January 16, 2013.

TESTOUT CORPORATION v. State Board of Equalization

Los Angeles Superior Court Case No. BC442139

Filed – 07/22/2010

BOE's Counsel

Elisa Wolfe

BOE Attorney

Wendy Vierra

Plaintiff's Counsel

Jonathan G. Fetterly

Holme Roberts & Owen LLP

Issue(s): Is plaintiff, an out-of-state retailer, entitled to a refund of use taxes it collected on sales it made to its California customers and submitted to the BOE during the period it held a use tax registration with the Board? (Sales and Use Tax Regulation [1684\(c\)](#).)

Audit/Tax Period: 1/1/03 – 12/31/05

Amount: \$105,602.00

Status: Plaintiff's amended complaint was filed on April 8, 2011. A hearing on matters presented in briefs is scheduled for November 10, 2011. On December 1, 2011, the court scheduled an Order to Show Cause re dismissal hearing, Trial Setting Conference, and Case Management Conference for January 25, 2012. On December 9, 2011, Plaintiff filed a Notice of Settlement of Entire Case, setting forth March 30, 2012, as the proposed Request for Dismissal deadline. On January 25, 2012, the court (incorrectly) ordered the case dismissed. Parties have reached a settlement. Waiting to obtain a court order. Court scheduled an Order to Show Cause re dismissal hearing for October 3, 2012. A refund check was sent to the Attorney General's office for remittance of payment to Plaintiff on October 10, 2012. Plaintiff filed a Request and Entry of Dismissal with Prejudice on November 27, 2012. The court dismissed the case with prejudice that same date.

TORRANCE, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-12-512338

Filed –08/09/12

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland & Knight

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in the City of Torrance as being subject to use tax is valid.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE filed its response on September 21, 2012.

TRIANGLE FOODS, INC. II**Cynthia Bridges, et al. v. Triangle Foods, Inc.***(Petition to Enforce Administrative Subpoena Duces Tecum)*

Los Angeles Superior Court Case No. BS132161

Plaintiff's Counsel

Philip C. Greenwald

Law Offices of Philip C. Greenwald

Filed – 9/27/2012

BOE's Counsel

Brian Wesley

BOE Attorney

W. Gregory Day

Issue(s): Respondent supplies and services catering trucks, and has refused to produce documents and records in response to an administrative subpoena concerning those catering trucks that was issued pursuant to [Revenue and Taxation Code section 6074](#) and [Government Code sections 15613, 15617 and 15618](#). BOE served three (3) administrative subpoenas duces tecum on the Respondents on May 16, 2012. Respondents have indicated that the issuance of the subpoena to each respondent was legally improper and violated the due process rights of the respondent.

Audit/Tax Period: NoneAmount: \$0.00

Status: On September 27, 2012, the Attorney General's office filed a Petition to Compel Compliance with Administrative Subpoena Duces Tecum. On October 29, 2012, Respondent moved to quash service of the BOE subpoenas and the Petition based on due process arguments. Hearing is set for February 22, 2013. BOE's reply brief is pending. Respondent filed an Affidavit of Prejudice on October 30, 2012.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499

Court of Appeal, Second Appellate District, Case No. B113661

Plaintiff's Counsel

James M. Gansinger

Gansinger, Hinshaw

Filed – 06/20/78

BOE's Counsel

Diane Spencer-Shaw

BOE Attorney

Sharon Brady Silva

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: NoneAmount: \$1,492.00

Status: On July 21, 2010, the California Supreme Court denied Woosley's Petition for Review. As no further appeals may be taken from the appellate decision, the case will be remanded to the trial court to make further determinations in accordance with the appellate court's decision. Remittitur issued August 3, 2010. Woosley filed his brief on August 22, 2011. The hearing was held on November 15, 2011, and was continued to conclude arguments regarding the first attorney's fee issue. A hearing is scheduled to begin on January 23, 2012 concerning the second and third attorneys' fees issues. Arguments as to the first, second, and third attorney's fees issues were continued to March 1, 2012, and completed. Hearing scheduled for June 26, 2012 was removed from court calendar. Hearing date scheduled on September 7, 2012 was cancelled until decision regarding assignment of judge is resolved. On October 11, 2012, the court issued a Minute Order to reassign the case to a new judge. On October 25, 2012, Plaintiff filed a petition challenging the reassignment. The State's opposition was filed on November 30, 2012, and the hearing on the issue will take place on December 13, 2012.

YABSLEY, RICHARD A. v. CINGULAR WIRELESS LLC

(Amicus Curiae Brief)

California Supreme Court, Case No. S176146

Court of Appeal, Second Appellate District, Case No. B198827

Filed – 12/15/08

BOE's Counsel

None

BOE Attorney

John Waid

Issue(s): This is an Unfair Competition Law case in which plaintiff alleges that the retailer illegally collected sales tax reimbursement based on the full value of the cellular phone purchased rather than the bundled price. The trial court found that [Regulation 1585](#), which required that the sales tax be imposed on the regular price, provided a safe harbor from the customer's unfair competition and false advertising claims. The appeal court affirmed on that basis and also held that [Cal. Const., art. XII, § 32](#), and [Rev. & Tax. Code, § 6932](#), barred the action because the customer's sole remedy for the return of excess sales tax collected was under [Rev. & Tax. Code 6901.5](#). The court also found that the plaintiff lacked standing to maintain his claims because he cited no independently actionable violations, did not show that he was entitled to reimbursement, and could not prove causation. The receipt gave the customer notice of the amount of the tax and, under Civ. Code, § 1555.1 created a rebuttable presumption that he agreed to pay it. BOE filed an amicus brief to support the taxpayer's position that: 1) BOE consumer remedy statutes cannot be used to adjudicate tax disputes; and 2) BOE regulations provided a safe harbor from allegations of illegal activities under the unfair competition law.

Audit/Tax Period: None

Amount: Unspecified

Status: The Court of Appeal issued its opinion on August 19, 2009, and published as 176 Cal.App.4th 1156, agreeing with the BOE's position. On November 19, 2009, the taxpayer petitioned the Supreme Court for review. The Court deferred further action pending consideration and disposition of a related issue in *Loeffler v. Target Corp.*, California Supreme Court Case No. S173972 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the Court. The Court vacated the Court of Appeal's opinion. Oral argument in Loeffler has not yet been set.

**SALES & USE TAX
CLOSED CASES
LITIGATION ROSTER
NOVEMBER 2012**

FILLMORE, CITY OF v. California State Board of Equalization

Los Angeles Superior Court Case No. BS120799

Court of Appeal, Second Appellate District No. B219483

Plaintiff's Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lasseben & Miller, LLP

Filed – 05/26/09

BOE's Counsel

Stephen Lew

BOE Attorney

John Waid

Issue(s): Whether [Revenue & Taxation Code section 7056](#) requires that consultants contracting with cities regarding local sales tax allocation must be authorized by resolution to represent the city and must meet certain criteria, including that they may not also represent retailers.

Audit/Tax Period: None

Amount: Unspecified

Status: On April 20, 2011, the Second District Court of Appeal reversed the decision of the trial court. On June 20, 2011, the Court of Appeal issued its remittitur. At the August 25, 2011 Status Conference, the judge issued an order that BOE is to reallocate to the petitioners local sales tax revenues from 4Q 2007 and all of 2008. The judgment was signed on September 15, 2011; writ is not yet served; and the Return must be filed by January 12, 2012. The Court of Appeal's decision to reverse the decision of the trial court became final on November 17, 2011. BOE filed its return on December 21, 2011. At the May 8, 2012, Status Conference, the trial court issued a ruling implementing the recent decision of the Court of Appeal. Funds Transfers were completed, as ordered by the Court, on September 7, 2012. Case complete.

DISCLAIMER

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